In the Supreme Court of the United States

OCTOBER TERM, 1953

No. 668

GIACOMO QUATTRONE, PETITIONER

v.

HENRY NICOLLS, DISTRICT DIRECTOR OF IMMIGRATION AND NATURALIZATION

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

BRIEF FOR THE RESPONDENT IN OPPOSITION

OPINION BELOW

The opinion of the Court of Appeals (R. 102-111) is reported at 210 F. 2d 513.

JURISDICTION

The judgment of the Court of Appeals was entered on February 19, 1954 (R. 111). The petition for a writ of certiorari was filed on April 1, 1954. The jurisdiction of this Court is invoked under 28 U. S. C. 1254(1).

QUESTIONS PRESENTED

1. Whether the evidence supports the administrative finding that petitioner was "affiliated" with the Communist Party.

2. Whether petitioner was deprived of due process of law by Section 3 (17) of the Internal Security Act of 1950, making the giving of support or money to an organization a conclusive presumption of affiliation.

3. Whether Section 22 of the Internal Security Act of 1950 authorizes deportation without requiring any finding of the purposes of the Communist Party or of the alien's knowledge of those purposes, and, if so, whether the statute is valid.

4. Whether Section 22 of the Internal Security Act of 1950 constitutes a bill of attainder or *ex post facto* law in violation of Article I, Section 9, Clause 3 of the Constitution.

5. Whether Section 22 of the Internal Security Act of 1950 imposes, without reasonable justification, restraints on petitioner's rights under the First Amendment.

STATUTES INVOLVED

Section 22 of the Internal Security Act of 1950, 64 Stat. 987, 1006, 8 U. S. C. (Supp. V) 137, amends the Act of October 16, 1918, to provide:

> Sec. 1. That any alien who is a member of any one of the following classes shall be excluded from admission into the United States:
>
> * * * * *

(2) Aliens who, at any time, shall be or shall have been members of any of the following classes:

* * * * *

(C) Aliens who are members of or affiliated with (i) the Communist Party of the United States * * *;

* * * * *

Sec. 4. (a) [8 U. S. C. (Supp. V) 137-3(a)] Any alien who was at the time of entering the United States, or has been at any time thereafter, a member of any one of the classes of aliens enumerated [above] * * * shall, upon the warrant of the Attorney General, be taken into custody and deported in the manner provided in the Immigration Act of February 5, 1917. The provisions of this section shall be applicable to the classes of aliens mentioned in this Act, irrespective of the time of their entry into the United States.

Section 3 (17) of the Internal Security Act, 50 U. S. C. (Supp. V) 782 (17), provides that:

The giving, loaning, or promising of support or of money or any other thing of value for any purpose to any organization shall be conclusively presumed to constitute affiliation therewith; but nothing in this paragraph shall be construed as an exclusive definition of affiliation.

STATEMENT

Petitioner, Giacomo Quattrone, legally entered the United States from Italy in 1906 as a permanent resident and has continuously resided in this country ever since (R. 2, 7). In January 1950, he was arrested on a warrant charging that he was in the United States in violation of the Act of October 16, 1918, as amended, in that he was, after entry, "* * * affiliated with an organization, association, society, and group that advises, advocates, and teaches the overthrow by force and violence of the Government of the United States" and that he was, after entry, "* * * affiliated with an organization, association, society, and group that writes, circulates, distributes, prints, publishes, and displays any written and printed matter advising, advocating and teaching the overthrow, by force and violence, of the Government of the United States" (R. 59-60).

On January 25, 1951, a deportation hearing on these charges was held before the Immigration and Naturalization Service (R. 13-45), at the conclusion of which the additional charge was lodged against the petitioner that he was deportable as "an alien who is affiliated with the Communist Party of the United States" (R. 43). The hearing was then adjourned to February 13, 1951, to allow the petitioner additional time to meet the newly-lodged charge, at which time petitioner presented some evidence (R. 45-59).

The principal evidence against the petitioner introduced at the deportation hearing was two transcriptions of interviews with petitioner by an ex-

amining officer of the Immigration and Naturalization Service, which petitioner had previously read and signed (R. 67-81). Those transcripts showed (1) that petitioner received five copies of the Sunday Worker every week which he distributed, sometimes for 10 cents, sometimes for nothing, depending on the wishes of the recipients (R. 73-74); (2) that he was "sympathetic" to the Communist Party because "they organize the workers" (R. 75); (3) that he had distributed circulars for the Party "to organize the people" (R. 75); (4) that he contributed money to the Party at its public meetings whenever collections came up, if he had money at such times (R. 77), and that he had made some contribution at least once every year since 1930 (R. 80-81); and (5) that he collected money for the Party which he turned in at the Party's Boston office (R. 77), that he had done this more than once, and that he had done it at the request of the Communist Party office (R. 78-79).

On January 15, 1951, the Hearing Officer rendered his decision and ordered that petitioner be deported on the ground that he had been, after entry, affiliated with the Communist Party (R. 83-85). On August 13, 1951, the decision and order of the Hearing Officer were affirmed by the Assistant Commissioner, Adjudications Division, Immigration and Naturalization Service (R. 91-97), who adopted the findings of the Hearing Officer, and stated, *inter alia,* that (R. 93-94):

> The record in the instant proceedings establish that respondent is an alien, that his only entry into this country occurred on December

30, 1906, that he is sympathetic to the aims of the Communist Party of the United States, that he subscribes to, and distributes, literature of that organization; and that he attends Party meetings. The record further establishes that respondent has collected contributions for the Communist Party, and that he has made personal contributions to this organization regularly since 1930.

The foregoing facts make it clear that respondent was, after his entry into this country, in sympathy with the aims of the Communist Party of the United States. The record establishes that he was not willing merely to aid this organization in a casual intermittent way, but that respondent has so conducted himself as to have brought about a status of mutual recognition that he might be relied upon to cooperate with the Communist Party of the United States on a permanent basis. Accordingly, we find that "affiliation" has been definitely established, and that respondent is thereby deportable under the Act of October 16, 1918, as amended.

An appeal from the Commissioner's decision was dismissed by the Board of Immigration Appeals on April 11, 1952, on the ground that "the Assistant Commissioner's decision is correct" (R. 97-98). A warrant of deportation was thereafter issued and served on petitioner on January 12, 1953, pursuant to which he was taken into custody and has since been held without bail (R. 2-3).

On January 15, 1953, petitioner filed an applica-

tion for a writ of habeas corpus (R. 1-6), challenging the qualifications of the Hearing Officer (who did not meet the standards required by the Administrative Procedure Act), and of the Examining Officer (who had earlier investigated the petitioner's case and had taken the statements which were the principal basis of the Government's case). He also challenged the sufficiency of the proof, the fact that the deportation order was based on a charge different from that which was the basis for the arrest, and the validity of the Internal Security Law of 1950, which, he said, "violated his rights of freedom of speech, press and assembly and is, in effect, a bill of attainder, and further * * * [a denial of] due process" (R. 5). After the Government's return and hearing, the application for habeas corpus was denied on February 19, 1953 (R. 11). The Court of Appeals, on February 19, 1954, unanimously affirmed (R. 111).

ARGUMENT

1. Petitioner contends that the order of deportation is invalid because there was insufficient evidence that he was "affiliated" with the Communist Party, and because the finding that he was affiliated was based on a conclusive presumption from the fact that he had made contributions to the Party, a presumption said to be a denial of due process. Petitioner does not argue that Congress could not, in the present circumstances, make an alien's affiliation with a party advocating the forceful and violent overthrow of the Government a basis for deportation. He assumes that it could, and argues instead

that the Congress cannot make financial support conclusive of affiliation.

But it is not necessary to reach this argument in the present case. The Internal Security Act of 1950 does make contributions to the Party a conclusive presumption of affiliation, but it also states, explicitly, that this should not be the only way to show affiliation (see p. 3, *supra*). Not only does the record here show additional evidence of affiliation, but it is also clear that the Commissioner of Immigration relied on this additional evidence, not merely on the statutory presumption.

As we have pointed out, (*supra*, pp. 4-5), the evidence shows that petitioner made contributions to the Communist Party, that he made them whenever requests were made which he could afford to meet, and that he had done this regularly since 1930. The evidence also shows that he had regularly distributed copies of the Sunday Worker, which he paid for himself but for which he did not demand payment. He likewise collected money which he turned in to the Party office in Boston; he had done this on more than one occasion, and had done it at the request of the Party. He also distributed Party circulars. And he testified that he is "sympathetic" to the Party and subscribes to the Daily Worker. The Commissioner of Immigration, after reviewing the facts, stated that (R. 94):

> The foregoing facts make it clear that respondent was, after his entry into this country, in sympathy with the aims of the Communist Party of the United States. The record establishes that he was not willing merely to aid this

> organization in a casual intermittent way, but that respondent has so conducted himself as to have brought about a status of mutual recognition that he might be relied upon to cooperate with the Communist Party of the United States on a permanent basis. * * *

This showing suffices to show affiliation under the test of *Bridges* v. *Wixon*, 326 U. S. 135, 141-149. There, the Court quoted with approval (at p. 142) the language of *United States* v. *Reimer*, 79 F. 2d 315, 317 (C.A. 2), that affiliation was not proved "unless the alien is shown to have so conducted himself that he has brought about a status of mutual recognition that he may be relied on to co-operate with the Communist Party on a fairly permanent basis." The Commissioner found that that is petitioner's situation.

Bridges v. *Wixon*, *supra*, at p. 143, goes on to say that affiliation—

> imports, however, less than membership but more than sympathy. By the terms of the statute it includes those who contribute money or anything of value to an organization * * *. That example throws light on the meaning of the term "affiliation". He who renders financial assistance to any organization may generally be said to approve of its objectives or aims.

The Court distinguished between such financial support of an organization and cooperation for the attainment of limited lawful objectives, even for long periods. The test is whether the support of the organization represents an indiscriminate un-

derwriting of all its activities, lawful or unlawful, or merely a cooperative venture in one of the Party's lawful activities which may be of special interest to the alien.

This petitioner's support of the Communist Party, as shown by the record, goes beyond occasional contributions, and is not restricted to support for limited purposes. His connection with, and support of, the Party has been long-continued and his patronage active. The statutory test of mutual recognition and responsibility was applied by the administrators and has adequate support in the record.

Although, as we have said, the issue is not present in this case whether Congress may constitutionally deport aliens who have knowingly given financial support to the Communist Party, that issue, if present, would in all probability be resolved in favor of validity, under *Harisiades* v. *Shaughnessy,* 342 U. S. 580, and *Bridges* v. *Wixon,* 326 U. S. 135, 143. For *Harisiades* makes clear the broad scope of Congressional power over the deportation of aliens; and the quotation from the *Bridges* decision set forth above suggests this Court's recognition of the reasonableness of using financial support of the Party as a test. It should also be noted that the "conclusive presumption" language of the 1950 Act has been dropped in Section 101 (e) (2) of the Immigration and Nationality Act of 1952 (66 Stat. 163, 172; 8 U. S. C. A. 1101 (e) (2)). The pertinent section now provides that: "The giving, loaning, or promising of support or of money or any other

thing of value for any purpose to any organization shall be presumed to constitute affiliation therewith; but nothing in this paragraph shall be construed as an exclusive definition of affiliation." The petitioner's request for review of the 1950 Act, therefore, would seem to require consideration of a repealed provision of only passing interest in a case which does not squarely concern the disputed aspect of the statute.

2. Petitioner's remaining contentions are (a) that Section 22 of the Internal Security Act of 1950 should be read to require (i) a finding of the evil purposes of the Communist Party during the period of petitioner's affiliation, (ii) a showing that petitioner knew of such activity and (iii) a showing that he believed in the illegal purposes attributed to the Party; (b) that Section 22, if not so construed, is invalid; (c) that Section 22 is a bill of attainder and an *ex post facto* law; and (d) that Section 22 imposes restraints, without reasonable justification, on petitioner's rights under the First Amendment.

All of these questions are dealt with in the brief and supplemental memorandum for the Government in *Galvan* v. *Press,* No. 407, O. T. 1953, in relation to similar claims by an alien found deportable because of past membership in the Communist Party. That discussion is equally applicable to an alien found to be currently affiliated with the Party (see R. 92). See also *Carlson* v. *Landon,* 342 U. S. 524, 535-6.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the petition for a writ of certiorari should be denied.

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